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EXTRAORDINARY

PART II—Section 2

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LOK SABHA

The following Bill was introduced in Lok Sabha on the 30th March, 1959:—

*BILL No. 27 OF 1959

A Bill further to amend the Bengal Finance (Sales Tax) Act, 1941, as in force in the Union territory of Delhi.

BE it enacted by Parliament in the Tenth Year of the Republic of India as follows:—

1. (1) This Act may be called the Bengal Finance (Sales Tax) (Delhi Amendment) Act, 1959.

Short title and commencement.

5 (2) It shall come into force on such date as the Chief Commissioner, Delhi, may, by notification in the Official Gazette, appoint.

Bengal Act VI of 1941.

2. Throughout the Bengal Finance (Sales Tax) Act, 1941, as in force in the Union territory of Delhi (hereinafter referred to as the 10 principal Act), unless otherwise expressly stated,—

Amendment of references to State and State Government.

(a) for the word "State" except where it occurs in the expression "State Government", the words "Union territory" shall be substituted;

15 (b) for the words "State Government", except in clause (b) of sub-section (3) of section 25, the words "Central Government" shall be substituted.

3. In section 2 of the principal Act,—

Amendment of section 2.

(a) clause (b) shall be omitted;

*The President has, in pursuance of clauses (1) and (3) of article 117 of the Constitution of India, recommended to Lok Sabha the introduction and consideration of the Bill.

(b) in clause (d),—

(i) after the words "does not include", the word "newspapers" shall be inserted;

(ii) the *Explanation* shall be omitted;

(c) for clause (g), the following clause shall be substituted, namely:—

'(g) "sale", with its grammatical variations and cognate expressions, means any transfer of property in goods by one person to another for cash or for deferred payment or for any other valuable consideration, and includes a transfer of goods on hire-purchase or other system of payment by instalments, but does not include a mortgage or hypothecation of or a charge or pledge on goods.

Explanation.—A sale or purchase of goods shall be deemed to take place inside the Union territory of Delhi if the goods are within that territory—

(i) in the case of specific or ascertained goods, at the time the contract of sale is made; and

(ii) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale by the seller or by the buyer, whether the other party is prior or subsequent to such appropriation;

(d) for clause (h), the following clause shall be substituted, namely:—

'(h) "sale price" means the amount payable to a dealer as consideration for the sale of any goods, less any sum allowed as cash discount according to the practice normally prevailing in the trade, but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof other than the cost of freight or delivery or the cost of installation in cases where such cost is separately charged;'

Amendment
of section 4.

4. In section 4 of the principal Act,—

(a) in sub-section (1),—

(i) the first proviso shall be omitted;

(ii) in the second proviso, the word "further" shall be omitted and for the word "Schedule", the words "Second Schedule" shall be substituted;

(b) after sub-section (4A), the following sub-section shall be inserted, namely:—

"(4B) Every dealer shall, notwithstanding that he is not liable to pay tax under any of the sub-sections (1) to

74 of 1956.

(4A), be liable to pay tax under this Act so long as he is registered under the Central Sales Tax Act, 1956, on all sales effected by him or on his behalf within the Union territory of Delhi on or after the date of his liability or the date of his registration, whichever is earlier, under the Central Sales Tax Act aforesaid.”;

(c) for clause (a) of sub-section (5), the following clause shall be substituted, namely:—

“(a) in relation to any dealer who imports for sale any goods into the Union territory of Delhi or manufactures or produces any goods for sale, regardless of the value of the goods imported, manufactured or produced, ten thousand rupees;”.

5. In section 5 of the principal Act.—

Amendment
of section 5.

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) The tax payable by a dealer under this Act shall be levied,—

(a) in the case of taxable turnover in respect of the goods specified in the First Schedule, at the rate of seven *naye paise* in the rupee;

(b) in the case of taxable turnover in respect of the goods specified in the Third Schedule, at the rate of two *naye paise* in the rupee;

(c) in the case of taxable turnover in respect of any other goods, at the rate of four *naye paise* in the rupee:

Provided that the Chief Commissioner, with the previous approval of the Central Government, may, by notification in the Official Gazette, add to, or omit from, or otherwise amend the First and the Third Schedules:

Provided further that if in respect of any goods or class of goods the Chief Commissioner is of opinion that it is expedient in the interest of the general public so to do, the Chief Commissioner, with the previous approval of the Central Government, may, by notification in the Official Gazette, direct that the tax in respect of the taxable turnover of such goods or class of goods shall, subject to such conditions as may be specified, be levied at such modified rate not exceeding the rate applicable under this sub-section as may be specified in the notification.”;

(b) in sub-section (2),—

(1) for sub-clause (ii) of clause (a), the following

sub-clause shall be substituted, namely:—

“(ii) sales to a registered dealer—

of goods of the class or classes specified in the certificate of registration of such dealer, as being intended for re-sale by him, or for use by him as raw materials in the manufacture of goods for sale; and

of containers or other materials for the packing of goods of the class or classes so specified for sale: 10

Provided that in the case of such sales a declaration duly filled up and signed by the registered dealer to whom the goods are sold and containing the prescribed particulars on a prescribed form obtainable from the prescribed authority is furnished in the prescribed manner by the dealer who sells the goods: 15

Provided further that where any goods specified in the certificate of registration are purchased by a registered dealer as being intended for re-sale by him or for use by him as raw materials in the manufacture of goods for sale, but are utilised by him for any other purpose, the price of the goods so purchased shall be allowed to be deducted from the gross turnover of the selling dealer but shall be included in the taxable turnover of the purchasing dealer;” 25

(2) the word “and” at the end of clause (a), and clause (b) shall be omitted.

Insertion of new sections 5A and 5B. 6. After section 5 of the principal Act, the following sections shall be inserted, namely:—

Power of Chief Commissioner to prescribe points at which goods may be taxed.

“5A. Notwithstanding anything to the contrary in this Act, 30 the Chief Commissioner may, by notification in the Official Gazette, specify the point in the series of sales by successive dealers at which any goods or class of goods may be taxed.

Burden of proof.

5B. The burden of proving that in respect of any sale effected by a dealer he is not liable to pay tax under this Act 35 shall lie on him.”

Amendment of section 8.

7. In section 8 of the principal Act, in sub-section (1), for the word “Schedule”, the words “Second Schedule” shall be substituted.

Amendment of section 8B.

8. In section 8B of the principal Act, in sub-section (1), the brackets and letter “(a)” and the words, brackets and letter “or (b) 40

executing contracts the value of which is likely to exceed thirty thousand rupees per year," shall be omitted.

9. After section 10 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 10A.

5 "10A. No person who is not a registered dealer shall collect in respect of any sale by him of goods in the Union territory of Delhi any amount by way of tax under this Act, and no registered dealer shall make any such collection except in accordance with this Act and the rules made thereunder."

Collection of tax only, by registered dealers.

10 10. In section 11 of the principal Act,—

Amendment of section 11.

(a) to sub-section (2a), the following proviso shall be added, namely:—

15 "Provided that where such assessment is made in consequence of or to give effect to any order of an appellate or revisional authority or of a court, the period of four years or six years, as the case may be, shall be reckoned from the date of such order.";

20 (b) in sub-section (3), after the words "under any of the provisions of this section", the words, figures and letter "or section 22A" shall be inserted;

(c) after sub-section (3), the following sub-section shall be inserted, namely:—

25 "(3a) When a dealer is in default in making a payment of the tax, the Commissioner or any person appointed to assist him under sub-section (1) of section 3, may in his discretion direct that, in addition to the amount of the arrears, a sum not exceeding that amount shall be recovered from the dealer by way of penalty."

30 11. In sub-section (1) of section 21 of the principal Act, for the words "such dealer may, by application in writing accompanied by a fee of one hundred rupees," the words "such dealer or the Commissioner may, by application in writing, and accompanied in the case of an application by a dealer by a fee of one hundred rupees," shall be substituted.

Amendment of section 21.

35 12. Section 21A of the principal Act shall be re-numbered as sub-section (1) thereof and after sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely:—

Amendment of section 21A.

"(2) Subject to any rules made in this behalf, any authority referred to in sub-section (1) may impound and retain in its

custody for such period as it thinks fit, any books of account or other documents produced before it, in any proceedings under this Act:

Provided that a person appointed to assist the Commissioner under sub-section (1) of section 3 shall not— 5

(a) impound any books of account or other documents without recording his reasons for so doing; or

(b) retain in his custody any such books or documents for a period exceeding thirty days without obtaining the approval of the Commissioner therefor.”. 10

Amendment
of section 22.

13. In sub-section (1) of section 22 of the principal Act,—

(a) after clause (d), the following clause shall be inserted, namely:—

“(dd) contravenes the provisions of section 10A; or”;

(b) in the proviso, after the word and figures “section 11”, 15 the words, figures and letter “or section 22A” shall be inserted.

Insertion of
new section
22A.

14. After section 22 of the principal Act, the following section shall be inserted, namely:—

Penalty for
concealment
of sales or
furnishing
inaccurate
particulars
or making
false repre-
sentations.

“22A. (1) If the Commissioner or any person appointed under sub-section (1) of section 3 to assist him, in the course of 20 any proceedings under this Act is satisfied that a dealer has concealed the particulars of his sales or has furnished inaccurate particulars of his sales and has thereby returned figures below the real amount, he may, after giving the dealer a reasonable opportunity of being heard, direct that the dealer 25 shall, in addition to the tax payable by him under this Act, pay, by way of penalty, a sum not exceeding one and a half times the amount of tax which would have been avoided if the figures returned by the dealer were accepted as correct.

(2) If any person purchasing goods is guilty of an offence 30 under clause (c) or clause (d) of sub-section (1) of section 22, the authority which granted to him or as the case may be, is competent to grant to him a certificate of registration under this Act may, after giving him a reasonable opportunity of being heard, by order in writing, impose upon him by way of 35 penalty a sum not exceeding one and a half times the tax which would have been levied under this Act in respect of the sale to him of the goods, if the offence had not been committed.”.

15. After section 23 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 23A.

5 **"23A. (1) The Chief Commissioner may, by notification in the Official Gazette, set up check-posts or barriers at any place in the Union territory of Delhi with a view to preventing evasion of sales tax and other dues payable under this Act.**

Setting up of check-posts and barriers.

10 (2) Every person transporting such goods as may be notified shall, at any check-post or barrier referred to in sub-section (1), file before such officer as may be authorised by the Chief Commissioner in this behalf a declaration in such form and in such manner as may be prescribed.

15 (3) The officer authorised by the Chief Commissioner under sub-section (2) or any other officer who may be authorised in this behalf may, for the purpose of satisfying himself that the provisions of sub-section (2) are not being contravened, and subject to such restrictions as may be prescribed, intercept and search any vehicle which may be suspected of contravening the said provisions."

20 16. In section 26 of the principal Act, in sub-section (2), clauses (a), (aa) and (c) shall be omitted.

Amendment of section 26.

17. For section 27 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 27.

25 **"27. Nothing in this Act or the rules made thereunder shall be deemed to impose, or authorise the imposition of a tax on any sale or purchase of any goods when such sale or purchase takes place—**

Savings.

30 (i) in the course of inter-State trade or commerce;
(ii) outside the Union territory of Delhi; or
(iii) in the course of import of the goods into, or export of the goods out of, the territory of India.

74 of 1956.

Explanation.—Sections 3, 4 and 5 of the Central Sales Tax Act, 1956, shall apply for determining whether or not a particular sale or purchase takes place in the manner indicated in clause (i), clause (ii) or clause (iii)."

35 18. After the Second Schedule to the principal Act, the following Schedule shall be inserted, namely:—

Insertion of new Third Schedule.

"THE THIRD SCHEDULE

[See section 5(1) (b)]

1. Coal including coke in all its forms.

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2. Cotton as defined in section 14 of the Central Sales Tax Act, 1956. 74 of 1956.
 3. Iron and steel as defined in section 14 of the Central Sales Tax Act, 1956. 74 of 1956.
 4. Jute as defined in section 14 of the Central Sales Tax Act, 1956. 74 of 1956.
 5. Oil-seeds as defined in section 14 of the Central Sales Tax Act, 1956." 74 of 1956.

STATEMENT OF OBJECTS AND REASONS

The sales tax law in force in the Union territory of Delhi is the Bengal Finance (Sales Tax) Act, 1941 (Bengal Act VI of 1941), as extended to that territory in 1951 and as subsequently amended by the former Delhi State Legislative Assembly. This Bill seeks to amend that law to give effect to the following objects, namely:—

(a) to increase the general rate of tax of 2 pice to 4 *naye paise* in the rupee, i.e., from 3½% to 4% as in the neighbouring State of Punjab;

(b) to levy at the rate of 2 per cent., as in the State of Punjab, tax on coal, cotton, iron and steel, jute and oil-seeds which are amongst the goods declared by section 14 of the Central Sales Tax Act, 1956 (74 of 1956) to be of special importance in inter-State trade or commerce;

(c) to list the goods which are normally consumed by the affluent sections of the society and to levy tax thereon at the rate of 7%;

(d) to remove 'newspapers' from the scope of the definition of 'goods' so that they will be excluded from the purview of taxation under the Act as in the States;

(e) to refrain from levying tax on lump sum indivisible works contracts although the levy of such tax may be in order according to the decision of the Supreme Court in *Mithan Lal and another v. State of Delhi and another*;

(f) to provide for the levy of tax at any point other than the point of last sale so that sales tax may be levied at the first point on certain items which are manufactured in factories.

Opportunity has also been taken to make a few minor amendments in the sales tax law, the need for which has been brought to light in the course of the administration of that law.

The notes on clauses appended hereto explain the provisions of the Bill, wherever necessary.

NEW DELHI;

MORARJI DESAI

The 23rd February, 1959.

1200 G of I Ex.—2.

Notes on clauses

Clause 2 seeks to modify references to "State" and "State Government" into references to "Union territory" and "Central Government" respectively. This is consequential on the changed position as from the 1st November, 1956.

Clause 3—sub-clause (a) omits the definition of "contract" in section 2(b) consequent on the decision to remove dealers engaged in the execution of indivisible contracts from the scope of the Act.

Sub-clause (b).—The amendment seeks to remove from the definition of "goods" newspapers in order that sales tax may not be levied on them in the Union territory of Delhi as in the case of States.

Sub-clauses (c) and (d).—The definitions of "sale" and "sale price" have been revised so as to be in conformity with the definitions in the Central Sales Tax Act, 1956.

Clause 4—sub-clause (b).—The amendment seeks to make the dealers registered under the Central Sales Tax Act, 1956, liable to compulsory registration under the Delhi Sales Tax law, in order to check evasion of tax.

Sub-clause (c) makes it clear that the importers, manufacturers and producers are liable to registration whenever their taxable turnover exceeds Rs. 10,000 regardless of the value of the goods imported, manufactured or produced by them.

Clause 5—sub-clause (a).—Some of the goods declared by section 14 of the Central Sales Tax Act, 1956, to be of special importance in inter-State trade or commerce are being placed under a new Schedule and the levy of tax thereon will be at the rate of 2 *naye paise* in the rupee. The general rate of tax has been raised to 4 *naye paise* in the rupee in order to fall in line with that prevailing in the neighbouring State of Punjab; and a uniform rate of tax at 7% will be levied on certain special goods consumed by the affluent sections of the society.

Sub-clause (b) (i).—The two changes made by the clause are (i) to omit the reference to works contract, and (ii) to add to the turnover of the purchasing dealers the value of goods, if any, covered by the false declarations made by them.

Sub-clause (b) (2) is consequential on clause 9.

Clause 6 empowers the Chief Commissioner to prescribe the point other than the last point in the series of sales by successive dealers at which any goods or classes of goods may be taxed.

Clause 9 enables tax under the Act to be collected only by dealers registered under the Act.

Clause 11 would enable the Government to refer any case to the High Court for decision on points of law, in the same way as dealers.

Clause 12 empowers the assessing authorities, subject to rules made for the purpose, to impound and retain any books of accounts or other documents produced before them.

Clause 14 seeks to impose penalties for the concealment of turnover and the supply of inaccurate particulars during the course of proceedings under the Act and for making false representations.

Clause 15 empowers the Chief Commissioner to set up check-posts and barriers in the Union territory with a view to check the evasion of tax.

Clause 16 omits certain provisions which have become unnecessary.

Clause 17 seeks to bring the Act into conformity with the provisions of the Central Sales Tax Act, 1956, and also incorporates the relevant constitutional provisions in the Act.

Clause 18 is consequential on clause 5.

FINANCIAL MEMORANDUM

The increase in the rates of tax and the levy of tax on some of the declared goods and the tightening up of the machinery for collection of tax under the Act, are likely to yield an additional annual revenue of about Rs. 25 lakhs. Additional expenditure may have to be incurred on the appointment of subordinate officers who have to be posted at the check barriers if the Chief Commissioner thinks it necessary to have them. In the event of such check barriers being established the additional expenditure is not likely to exceed Rs. 25,000/- per annum.

MEMORANDUM REGARDING DELEGATED LEGISLATION

New sub-section (2) of section 21A, inserted by clause 12 of the Bill, seeks to empower the Government to frame rules subject to which the Commissioner or any person authorised by him may impound and retain any books or documents produced in any proceedings under the Act.

New section 23A (relating to setting up of check-posts and barriers), inserted by clause 15 of the Bill, empowers the Government to make rules regarding the form of declaration to be filled by persons transporting goods and the restrictions subject to which any vehicle can be intercepted and searched at a check-post or barrier.

These provisions relate to matters of procedure and detail and the delegation of legislative power is of a normal character.

M. N. KAUL,
Secretary.

